

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2013-392-E**

IN RE: Joint Application of Duke Energy)
Carolinas, LLC and North Carolina)
Electric Membership Corporation for a)
Certificate of Environmental)
Compatibility and Public Convenience)
and Necessity for the Construction and)
Operation of a 750 MW Combined)
Generating Plant Near Anderson, SC.)

**PETITION
TO
INTERVENE
(Renewal)**

INTRODUCTION

After Invenergy Thermal Development LLC's, (hereinafter as, "Petitioner", or "Invenergy"), Petition to Intervene, filed pursuant to R. 103-825, of this Commission's Rules and Regulations, and the Applicants' Objection thereto, the Public Service Commission of South Carolina, (hereinafter, "Commission"), issued its Directive Order of December 18, 2013. That Order, *inter alia*, allowed Invenergy to revise its Petition to Intervene to make a showing of standing, if filed prior to January 7, 2014. Invenergy's Renewed Petition to Intervene, relates back to its filing of a Petition to Intervene on December 3, 2013, with this Commission. Factually, because Invenergy's bid in Duke Energy Carolinas, LLC, (hereinafter, "Duke") Request for Proposals, (hereinafter, "RFP") was one of the top bids, had the bids been evaluated under a transparent evaluation protocol, Invenergy would have been the winning bidder, which is the ground for Invenergy's Petition to Intervene. Invenergy has an Option on land in Anderson County, South Carolina on which it planned construction related to this Docket and Invenergy will forfeit the monetary value of that Option, because of Duke's actions. Therefore, Invenergy suffered an injury in fact and has a concrete and particularized interest in this Docket. Invenergy is concerned about the suspect decision of Duke to self-build generation, which resulted from a flawed evaluation process, currently employed by Duke in South Carolina. However, because the evaluation process does not allow for review of the bid process, Invenergy has been injured by the expense of its bid and Duke's opaque, RFP bid process only makes Invenergy a sham participant in Duke's self-serving RFP process. This Commission should be concerned by Duke's dismissive attitude towards the Commission's involvement, as stated in Duke's Objection, filed December 9, 2013, "Certainly the Commission is familiar with the processes utilities use to make its (*sic*) various decisions, but that familiarity cannot replace the insight, tools, and analyses utilities use to choose their own resources." (Objection, page "4").

PETITIONER

Invenergy Thermal Development LLC.

1. Invenergy is an independent power producer. Along with its affiliated companies, Invenergy is a clean energy generation leader and North America's largest independent wind power generation company. Invenergy's portfolio includes more than 2,200 MW of natural gas-fueled electric generating projects in operation, including greenfield projects initiated by the company, as well as facilities Invenergy acquired and developed.

2. Operating projects consist of the Cannon Falls Energy Center (Minnesota), Grays Harbor Energy Center (Washington), Hardee Power Station (Florida), Spindle Hill Energy Center (Colorado), and the St. Clair Energy Centre (Ontario, Canada). Invenergy has additional projects in various stages of development in the United States and Canada.

3. Petitioner participated in a Request for Proposals from Duke, which had a due date of November 27, 2012. Petitioner responded to Duke's subsequent requests for additional information and updated pricing throughout 2013. In October of 2013, Duke notified Petitioner that its proposed project was not selected as the winner of the RFP process and that Duke was selecting its own project to advance.

PETITION TO INTERVENE (RENEWAL)

4. On October 25, 2013, Duke Energy Carolinas, LLC, and North Carolina Electric Membership Corporation filed a Joint Application with the Commission, requesting a Certificate of Environmental Compatibility and Public Convenience and Necessity, for the Construction and Operation of a 750 MW Combined Generating Plant Near Anderson, South Carolina.

5. Given the state of the record in this Docket at this stage of the proceedings, Petitioner lacks sufficient information to set forth its position in this matter with finality at this time. Until such time as additional information is made available to Petitioner or in the record, Petitioner is unable to conduct a full and fair comparison of its proposed project to Duke's proposed project, to ensure South Carolina ratepayers are receiving the lowest total cost purchase.

6. Because Invenergy's bid in Duke Energy Carolinas, LLC, (hereinafter as, "Duke") Request for Proposals, ("RFP") was one of the top bids, had the bids been evaluated under a fair and transparent evaluation protocol, Invenergy would have been the winning bidder. Therefore Invenergy suffered an injury in fact and has a concrete and particularized interest in this Docket. Invenergy is concerned about the suspect decision of Duke to self-build generation, which resulted from a flawed evaluation process, currently employed by Duke in South Carolina.

7. Petitioner is directly impacted by the relief sought in the Joint Application.

8. Petitioner should be allowed to intervene in this Docket, with full rights of cross examination and participation.

9. Invenergy's position is that, the granting of Invenergy Thermal Development LLC's Renewed Petition to Intervene is in the public interest (i) is consistent with the policies of this Commission in encouraging maximum public participation in issues before it, so that a full and complete record addressing all parties' views and concerns can be developed (ii) is consistent with this Commission's Regulation R. 103-825 (iii) is consistent with the South Carolina Supreme Court's decision in Smiley v. South Carolina Department of Health and Environmental Control, 374 S.C. 326, 649 SE 2d 31 (2007) and Berkeley Electric Coop., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 SE 2d 712 (1990) (iv) because this Commission previously overruled Duke's objection to an Intervention in Docket No.:2011-20-E, Order No.: 2011-264 and (v) is consistent with this Commission's long standing process of liberal intervention dating back to Docket No. 84-10-C, Order No. 84498.

Further, The case cited by Applicants, Ex parte Government Employee's Ins. Co., 373 S.C. 132, 644 SE 2d 699 (2007), further states, "**Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties.**" (emphasis supplied), (internal citations omitted). Finally, as to Duke's standard argument against Intervention, that ORS will ensure the public interest, please consider the following case. In, Berkeley Electric Coop., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 SE 2d 712 (1990), the South Carolina Supreme Court has provided guidance, "It has been held that a governmental entity's representation of a private party's interests does not constitute adequate representation." (internal citations omitted).

Invenergy's Intervention is Consistent with this Commission's Policy.

Invenergy's intervention is consistent with this Commission's long standing policy, "...in encouraging maximum public participation in issues before the Commission, and [Intervention] should be allowed so that a full and complete record... can be developed." (Order No.: 2005-725, in Docket No.: 2005-270-G, dated December 16, 2005).

Commission's Requirement for Intervention.

The broad parameters of the Commission Rule on Intervention only require (i) grounds of interest (ii) facts relied on and (iii) relief sought (R. -103-825 Petitions). Invenergy's Petition to Intervene complies with all three of these broad requirements.

Guidance from South Carolina Supreme Court on Intervention.

The Applicants seek a rigid formulaic Rule for Intervention before this Commission. However, the Supreme Court of South Carolina has held, “Each case [on Intervention] will be examined in the context of its unique facts and circumstances.” Berkeley Electric Coop., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 SE 2d 712 (1990).

However, a Previous Petition to Intervene From Duke, Met no Such Rigid Requirement.

As recently as September 11, 2012, counsel for Duke sought to intervene in a Docket before this Commission, with the following general language, “...they [Duke] have a material interest in the outcome of this proceeding as the order issued in this docket establishes a precedent that could impact PEC and DEC’s business interests.” (Petition to Intervene of Duke Carolinas, LLC, and Progress Energy Carolinas, Inc., dated September 11, 2012, in Docket No.: 2011-479-E).

For Almost Thirty Years, this Commission has Favored Liberal Intervention.

Order No. 84498, issued in Docket No.: 84-10-C, by this Commission on June 8, 1984, held that, “The Commission is of the opinion, and so finds, that it is in the public interest to grant the relief requested in the Petition so that the Commission may consider all of the relevant information in the instant proceeding.”, (Page “2” of Order No. 84498).

Also, Order No.: 1999-20, issued in Docket No. 95-835-C, by this Commission on January 8, 1999, held that, “...SECCA’s intervention out-of-time will aid us in developing a full record in this case...” (Page “2” of Order No.: 1999-20).

10. The Petitioner is represented by counsel in this proceeding:

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11. This Petition to Intervene (Renewal) relates back to the Petition to Intervene filed on December 3, 2013. Petitioner is evaluating the time required for any presentation before the Commission at the Hearing to be held in this matter.

12. As required by the Commission, future Commission correspondence concerning this Petition to Intervene should be sent to Carrie Schurg at, CASchurg@AustinRogersPA.com.

WHEREFORE, Petitioner prays for the following relief:

- (a) That this Petition to Intervene (Renewal) be accepted and that Petitioner be made a party of record;
- (b) That Petitioner be allowed to participate fully in this proceeding and take such positions as it deems advisable; and
- (c) For such other and further relief as is just and proper.

Respectfully Submitted,
/S/

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January 2, 2014
Columbia, South Carolina